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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/538,704      | 02/21/2006  | Monilola Olayioye    | DAVI186.004APC      | 6939             |

20995 7590 05/29/2009  
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| EXAMINER |
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FRONDA, CHRISTIAN L

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1652

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|-------------------|---------------|
| NOTIFICATION DATE | DELIVERY MODE |
|-------------------|---------------|

05/29/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

|                              |  |  |  |
|------------------------------|--|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/538,704   | <b>Applicant(s)</b><br>OLAYIOYE ET AL. |  |
|                              | <b>Examiner</b><br>CHRISTIAN L. FRONDA | <b>Art Unit</b><br>1652                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26,33-46 and 49 is/are pending in the application.
- 4a) Of the above claim(s) 35,37-46 and 49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26,33,34 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. Claims 26, 33-46, and 49 are pending in the application. Claims 35, 37-46, and 49 have been previously withdrawn from consideration as drawn to a non-election invention.
2. Claims 26, 33, 34, and 36 are under consideration in the instant Office Action.
3. The rejection of claims 26, 33, 34, and 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to meet the enablement requirement has been obviated by the amendment to the claims filed 02/12/2009.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 26, 33, 34 and 36 stand rejected under 35 U.S.C. 102(b) as being anticipated by Rosen et al., United States Patent Application Publication No. US 2002/0052308. The reference teachings are reiterated below.

Rosen et al. disclose a nucleic acid sequence (SEQ ID NO: 143) that is 100% identical to the nucleic acid sequence of SEQ ID NO:4 (see STIC alignment analysis attached to the previous Office Action filed 06/06/2008).

Rosen et al. teach that the invention relates to newly identified tissue specific cancer associated polynucleotides and the polypeptides encoded by these polynucleotides herein collectively known as "cancer antigens," and to the complete gene sequences associated therewith and to the expression products thereof, as well as the use of such tissue specific cancer antigens for detection, prevention and treatment of tissue specific disorders, particularly the presence of cancer. This invention relates to the cancer antigens as well as vectors, host cells,

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antibodies directed to cancer antigens and recombinant and synthetic methods for producing the same. Also provided are diagnostic methods for diagnosing and treating, preventing and/or prognosing tissue specific disorders, including cancer, and therapeutic methods for treating such disorders. The invention further relates to screening methods for identifying agonists and antagonists of cancer antigens of the invention. The present invention further relates to methods and/or compositions for inhibiting the production and/or function of the polypeptides of the present invention (Abstract). Thus, Rosen et al. teach all the elements of claims 26, 33-34 and 36 and these claims are anticipated under 35 USC 102(b).

The amendment and arguments filed 02/12/2009 have been fully considered but are not persuasive. Although recitation of the "consisting of" language obviates Rosen et al. from anticipating the nucleotide sequence consisting of SEQ ID NO: 4, the claims as amended still reads on nucleic acid sequence of SEQ ID NO: 143 taught by Rosen et al. which inherently encodes the amino acid sequence of SEQ ID NO: 6. Thus, the reference teachings anticipate the claimed invention.

### ***Conclusion***

6. No claims are allowed.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian L Fronda whose telephone number is (571)272-0929. The examiner can normally be reached Monday-Thursday and alternate Fridays between 9:00AM - 5:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nashaat Nashed can be reached on (571)272-0934. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christian L. Fronda/

Primary Examiner

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